

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSEPH RABADI,

Plaintiff,

v.

CITY OF YONKERS, MIRIAM E. ROCAH, in
her official capacity as district attorney for
Westchester County, COUNTY AUTO &
COMMERCIAL TOWING NORTH, INC.,
Defendants.
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ORDER

21 CV 1258 (VB)

On February 16, 2021, plaintiff moved for a writ of replevin. (Doc. #10).

On March 10, 2021, defendant County Auto & Commercial Towing North, Inc., filed an answer to the complaint and a crossclaim against defendants City of Yonkers and Miriam E. Rocah. (Doc. #15).

On March 19, 2021, defendant Rocah moved to dismiss the complaint, arguing plaintiff's complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1) & (6) and plaintiff's motion for writ of replevin be denied pursuant to Rule 64(b). (Doc. #16).¹

Accordingly, it is hereby ORDERED:

1. By no later than March 29, 2021, plaintiff must notify the Court by letter whether he (i) intends to file an amended complaint in response to the motion to dismiss, or (ii) will rely on the complaint that is the subject of the motion to dismiss.

2. Also by March 29, 2021, plaintiff shall reply to the portion of defendant's motion opposing plaintiff's motion for a writ of replevin.

3. If plaintiff elects not to file an amended complaint, the motion will proceed in the regular course, and the Court is unlikely to grant plaintiff a further opportunity to amend to address the purported deficiencies made apparent by the fully briefed arguments in defendant's motion. See Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC, 797 F.3d 160, 190 (2d Cir. 2015) (leaving "unaltered the grounds on which denial of leave to amend has long been held proper, such as undue delay, bad faith, dilatory motive, and futility"); accord F5 Capital v. Pappas, 856 F.3d 61, 89–90 (2d Cir. 2017). The time to file opposing and reply papers shall be governed by the Federal Rules of Civil Procedure and the Local Civil Rules, unless otherwise ordered by the Court.

¹ Despite its deadline to answer being March 9, 2021 (Doc. #12), the City of Yonkers has not answered, moved, or otherwise responded to the Complaint.

4. If plaintiff elects to file an amended complaint, he must file the amended complaint by no later than 14 days after notifying the Court of its intent to do so. Within 21 days of such amendment, defendants may either: (i) file an answer to the amended complaint; or (ii) file a motion to dismiss the amended complaint; or (iii) notify the Court by letter that they are relying on the initially filed motion to dismiss.

Dated: March 22, 2021
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge